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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,169	03/23/2004	Atul Singhal	SING3001	2180
23364	7590	05/25/2007		
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			EXAMINER PRATT, HELEN F	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 05/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/806,169

Applicant(s)

SINGHAL, ATUL

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Newly submitted claim 9 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claim is to a method of feeding for at least the first few weeks of life, which is different than a composition as originally filed. Also, the limitations of claim 9 were not in the original claims and have not been searched.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 9 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bjorkstrom et al. (WO 01/50889) or Mozzafer (6,096,870) or Ahmed et al. (5,756,680) or Auestad et al. (2004/0214791 A1) or Nielsen (1,607,844).

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Bjorkstrom discloses a beverage composition as in claim 1 containing 40-60 Kcal/100 ml, and 0.5 –5.0 g/100 ml drink of protein and carbohydrates in the amount of from 6-20 g/100 ml. No weight is given to the name of the composition (abstract).

Whey proteins are disclosed as in claim 2 (page 4, lines 8-24).

The drinks contain water as in claims 5-8 (page 14, lines 10-15).

Mozzaffar et al. disclose an infant feeding formula, which contains protein, fat and carbohydrate within the claimed amounts and within the calorie amounts (col. 56, table 15 under formula of the present invention as in claims 1-4. Water is added as in claims 5-8 (Table 15, col. 56).

Ahmed et al. disclose an infant feeding formula, which contains protein, fat and carbohydrate within the claimed amounts and within the calorie amounts (col. 11, table 7, 2<sup>nd</sup> column under “formula of present Invention) as in claims 1-4. Water is added as in claims 5-8 (Table 15, col. 56).

Auestad et al. disclose an infant feeding formula which contains protein, fat and carbohydrates within the claimed amounts as in claims 1-8, also water is added (page 5, 0051, 0052).

Nielsen discloses an infant formula which is comparable to human milk and contains amounts within the claimed amounts as in claims 1 –8 (page 1, col. 2, lines 75-33, page 2, lines 8-20, page 3, lines 85-105) as in claim s 1-8.

Claim 1 further requires that the infant feeding formula is for “a controlled growth rate newborn” infant feeding formula, which provides fewer calories than the conventional infant formula. Applicants have not argued the 102 rejections so that it is

assumed that applicants agree that the limitations have been disclosed for the original claims. As the composition has been shown, and provides amounts within the claimed range, then the composition would inherently have the above limitations and the growth rate would be controlled, as fewer calories would inherently allow an infant to grow more slowly.

### ARGUMENTS

Applicant's arguments filed 4-24-07 have been fully considered but they are not persuasive. Applicants argue that as to the preamble of the claim, that "while a difference for the composition claims is in the preamble, the preamble should be given effect here as breathing life and meaning into the claim". However, as above, as the composition has been shown, and provides amounts within the claimed range, then the composition would inherently have the above limitations and the growth rate would be controlled, as fewer calories would inherently allow an infant to grow more slowly. Nothing has been shown to the contrary.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 5-23-07

  
**HELEN PRATT**  
**PRIMARY EXAMINER**